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**REPORT OF THE GOVERNOR'S  
BLUE RIBBON TASK FORCE  
ON SELF-INSURANCE**

**FEBRUARY 26, 1988**



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STATE OF MARYLAND  
OFFICE OF THE LT. GOVERNOR

MELVIN A. STEINBERG  
LT. GOVERNOR

February 26, 1988

The Honorable William Donald Schaefer  
Governor of Maryland  
State House  
Annapolis, Maryland 21404

Dear Governor Schaefer:

Pursuant to your letter of April 2, 1987, I am pleased to transmit the report of the Governor's Blue Ribbon Task Force on Self-Insurance.

Our Task Force had its initial meeting on July 7, 1987 and subsequently held six working meetings, one public hearing and a voting session prior to adopting its report on February 11, 1988. After receiving substantial evidence and testimony from various segments of the community, it became apparent that certain changes were needed in the area of self-insurance.

The following report provides recommendations adopted by the Task Force to address the problems it identified with the existing statutory and regulatory structure of self-insurance in Maryland.

On behalf of the members of the Task Force and its staff, I wish to thank you for allowing us the opportunity to advise you in this important area.

Sincerely yours,

A handwritten signature in cursive script, appearing to read 'Melvin A. Steinberg'.

MELVIN A. STEINBERG  
Chairman

MAS:jw  
Enclosure



STATE OF MARYLAND  
OFFICE OF THE LT. GOVERNOR

MELVIN A. STEINBERG  
LT. GOVERNOR

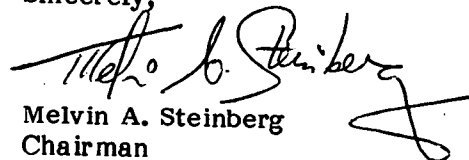
February 26, 1988

MEMORANDUM TO RECIPIENTS OF THIS REPORT:

The Governor's Task Force On Self-Insurance is pleased to provide you with a copy of its final report.

If you have any questions with respect to its contents, please contact Mr. Patrick Roddy at (301) 974-2804.

Sincerely,

  
Melvin A. Steinberg  
Chairman

WS/ph

Attachment

**Report of the Governor's  
Blue Ribbon Task Force  
On Self-Insurance**

**February 26, 1988**

**Prepared by:**

**Office of the Lt. Governor  
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Department of Budget and Fiscal Planning  
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GOVERNOR'S BLUE RIBBON TASK FORCE ON SELF-INSURANCE

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## EXECUTIVE SUMMARY AND RECOMMENDATIONS

### Conclusions

It is the conclusion of the Task Force that self-insurance is a viable alternative to third-party insurance coverage in areas where the State has enacted financial responsibility laws. These areas are motor vehicle liability, workers' compensation claims, County Boards of Education liability, practical plumbing services liability, certain nursing home custodial liability and amusement ride liability. Under the various responsibility statutes, the State administers self insurance programs to protect the public. Further, within each self-insurance program, the standards applied to all applicants should be uniform to ensure compliance with the law.

Although the Task Force found that the regulatory structure is adequate at both the Workers' Compensation Commission and the Motor Vehicle Administration, there are concerns in the administration of these programs. The Motor Vehicle Administration needs additional resources and expertise in the areas of insurance and risk management.

Portions of the workers' compensation statutory framework, as it pertains to self-insurance, should be amended to eliminate ambiguous or conflicting statutes. Furthermore, the Commission should be designated as the sole regulatory entity on workers' compensation self-insurance.

### Recommendations

1. The Motor Vehicle Administration should require all self-insureds to provide clearly delineated claims reserve information.
2. The Motor Vehicle Administration should establish in the Code of Maryland Regulations (COMAR) a requirement that all applicants for self-insurance provide the Motor Vehicle Administration with an annual certified financial statement.
3. The ownership requirements for automobile self-insurance (COMAR 11.18.02.01) should remain as currently provided and self-insurance certification should be denied to any entity not in compliance with this requirement.
4. The minimum fleet size required for automobile self-insurance should remain as currently provided (more than 25 vehicles - COMAR 11.18.02.01) and self-insurance certification should be denied to any entity which has 25 or fewer vehicles.
5. The Motor Vehicle Administration should review its current vehicle information requirements and incorporate into COMAR those which are determined to be necessary for effective program administration.
6. The Motor Vehicle Administration should establish a mechanism to provide administrative review and oversight of its self-insurance certification and security decisions.

7. The Motor Vehicle Administration's self-insurance program should establish a fee structure that would allow the program to become self-supporting.
8. The Motor Vehicle Administration should develop and utilize a financial viability index and/or other specific assessment criteria to evaluate applicants for self-insurance.
9. The Workers' Compensation Commission and the Motor Vehicle Administration should require by regulation that self-insureds report any substantial divestiture and/or acquisition within 30 days of the event.
10. The Workers' Compensation Law should be amended to remove contradictory language regarding minimum security deposits.
11. The authority to regulate private group self-insurance for workers' compensation should be transferred from the Insurance Division to the Workers' Compensation Commission.
12. The term "becomes insolvent", as used to determine the Uninsured Employers Fund liability, should be amended to "defaults on payment of a workers' compensation claim due to the financial inability of the self-insured entity to pay the claim."
13. The Workers' Compensation Law should be amended to remove the \$500 cap on annual fees in order to allow the program to be self-supporting.

14. The statutory requirement that the County Boards of Education should carry liability insurance should be modified to remove existing pools from the regulation of the Insurance Commissioner.

## Chapter 1

### INTRODUCTION

#### Background

In February, 1986, then President of the Maryland Senate, Melvin A. Steinberg, was made aware of potential problems within the Motor Vehicle Administration's self-insurance program for privately owned vehicle fleets. After discussion with the Motor Vehicle Administrator, the President wrote to Governor Hughes, expressing the following concerns about the program: (1) unspecified criteria for requiring collateral for a particular applicant; (2) the absence of a formal self-insurance program structure; (3) the absence of an independent auditing procedure; (4) the absence of actuaries or risk managers participating in the program; and (5) the absence of rules or regulations relating to the role of the State in assessing and certifying the financial responsibility of a company approved for self-insurance. These concerns were verified by officials at the Motor Vehicle Administration.

As a result Senate Bill 734 was introduced in the 1987 General Assembly. Its purpose was to transfer responsibility for the regulation of self-insured motor vehicle fleets from the Motor Vehicle Administration to the Insurance Commissioner. This bill was not enacted. However, a task force was created by Governor William Donald Schaefer to provide insight into various regulatory issues and the State's oversight role in self-insurance. Governor Schaefer's letter establishing the Task Force appears as Appendix A of this report.

## Current Regulatory System

Maryland's statutory law mandates minimum levels of liability and property insurance in a number of areas. In certain instances, the law provides that self-insurance is an alternative method of satisfying these requirements.

### I. Boards of Education

Section 4-105 of the Education Article provides:

- (a) Each county board shall carry comprehensive liability insurance to protect the board and its agents and employees. The purchase of this insurance is a valid educational expense.
- (b) The State Board shall establish standards for these insurance policies, including a minimum liability coverage of not less than \$100,000 for each occurrence. The policies purchased under this section shall meet these standards.
- (c)
  - (1) A county board complies with this section if it is self-insured for at least \$100,000 for each occurrence under the rules and regulations adopted by the State Insurance Commissioner.
  - (2) A county board that elects to self-insure under this subsection periodically shall file with the State Insurance Commissioner, in writing, the terms and conditions of the self-insurance.
  - (3) The terms and conditions of this self-insurance:
    - (i) Are subject to the approval of the State Insurance Commissioner; and
    - (ii) Shall conform with the terms and conditions of comprehensive liability insurance policies available in the private market.

## II. Plumbers

Article 56, Section 462C(a) provides:

No person may perform practical plumbing services unless that person's work is covered by;

- (1) self-insurance in amounts required by the standards for self-insurance established by the State Insurance Commissioner, or
- (2)
  - (i) Liability insurance for bodily injury in the amount of at least \$300,000; and
  - (ii) Liability insurance for property damage in the amount of at least \$100,000.

## III. Motor Vehicles

The Motor Vehicle Administration requires that licensed drivers maintain a motor vehicle liability insurance policy which contains specified minimum coverage. The minimum coverage is:

- (1) The payment of claims for bodily injury or death arising from an accident of up to \$20,000 for any one person and up to \$40,000 for any two or more persons, in addition to interest and costs;
- (2) The payment of claims for property of others damaged or destroyed in an accident of up to \$10,000, in addition to interest and costs;
- (3) The minimum medical, hospital and disability benefits (PIP) up to \$2,500 as required under Section 539 of the Insurance Code; and
- (4) The minimum uninsured motorist coverage which must be in at least the same amount as the coverage required in (1) and (2) above. This requirement is found in Section 541 of the Insurance Code.

The above insurance requirements are found in Section 17-103(b) of the Transportation Article. The exception to this insurance policy requirement, Section 17-103(a)(2), states:



The Administration may accept another form of security in place of a vehicle liability insurance policy if it finds that the other form of security adequately provides the benefits required by subsection (b) of this Section.

There exist no legislative guidelines as to when another form of security would be adequate in place of an insurance policy.

#### IV. Nursing Care-Institutions for Elderly Individuals

The Health General Article has bonding or credit requirements for nursing care facilities which can be satisfied by self-insurance. The actual amount of self-insurance; however, is not specified in the statute. Section 19-346(d)(3) provides:

A facility that is a related institution caring for individuals and whose administrator or bookkeeper has control over or access to the funds of a resident of the facility, shall provide as determined by the department, either

1. A bond in an amount the department requires;
2. A letter of credit equal to 3 times the average yearly balance of funds of all residents of the facility; or
3. Self-insurance if the net worth of the facility is at least 3 times the average yearly balance of funds of all residents of the facility.

#### V. Amusement Rides or Attractions

Beginning July 1, 1987, an amusement ride or attraction may self-insure in place of maintaining a liability insurance policy if the owner and operator of the ride or attraction meets the requirements of a specific exemption.

The following provision, found in Article 89, Section 78, sets forth the general insurance requirement and when the exemption applies.

(a)(1) A mechanical amusement ride may not operate unless the owner or lessee of such ride has purchased insurance in an amount of not less than \$350,000 against liability for injury to persons arising out of the use of the amusement ride.

(2) A nonmechanical amusement ride or amusement attraction may not operate unless the owner or lessee of such ride or attraction has purchased insurance in an amount of not less than \$200,000 against liability for injury to persons arising out of the use of the amusement ride or amusement attraction.

(b) The county in which the amusement ride or amusement attraction is located may purchase, on behalf of nonprofit organizations, the amount of insurance required under this subtitle for the amusement ride or amusement attraction. A county that merely purchases insurance for a lessee or owner of an amusement ride or amusement attraction is immune from liability for personal injury to individuals arising out of the use of the amusement ride or attraction.

(c) The insurance policy shall be procured from any insurer or surety that is acceptable to the Insurance Commissioner of Maryland.

(d) A certificate of insurance shall be furnished to the Commissioner prior to the issuance of a certificate of inspection.

(e) (1) An amusement ride or attraction, owned and operated by a nonprofit community service corporation incorporated under Maryland law that is authorized to collect charges or assessments by a covenant running with the land and that has gross annual revenues of at least \$15,000,000, complies with this section if it is self-insured for at least \$1,000,000 against liability for injury arising out of the use of the amusement ride or attraction under the regulations adopted by the State Insurance Commissioner.

(2) The owner or lessee of an amusement ride or attraction that elects to self-insure under this subsection periodically shall file with the State Insurance Commissioner, in writing, the terms and conditions of the self-insurance.

(3) The terms and conditions of this self-insurance:

- (i) Are subject to approval of the State Insurance Commissioner, and;
- (ii) Shall conform with the terms and conditions of comprehensive liability insurance policies available in the private market.

(4) Until regulations are adopted by the Insurance Commissioner, an amusement ride or attraction, described in subsection (e) (1) of this section may, with the approval of the Insurance Commissioner, satisfy this section if its owner is authorized by a covenant running with the land to collect payments or charges based on the value of real property.

(f) (1) In this section the following words have the meanings indicated.

(2) "Mechanical amusement ride" means any mechanical device that carries or conveys passengers along, around, or over a fixed or restricted route or course or within a defined area, for the purpose of giving its passengers amusement, pleasure, thrills, or excitement.

(3) "Nonmechanical amusement ride" means any device that carries or conveys passengers by the passengers' own power or by gravity, including but not limited to water slides and water flumes, along, around or over a fixed or restricted route or course or within a defined area, for the purpose of giving its passengers amusement, pleasure, thrills, or excitement.

## VI. Workers' Compensation Insurance

In addition to purchasing insurance from the State Accident Fund or a licensed insurer, an employer will satisfy the Workers' Compensation requirements by either self-insuring or by participating in a self-insurance group. The eligibility requirements for self-insuring are contained in Article 101, Sections 16 and 16A (Workers' Compensation Article) and the requirements for group self-insurance are found in Article 48A, Sections 608 and 609 (Insurance Code).

Article 101, Section 16, provides:

The employer shall secure compensation to his employees in one of the following ways:

- (1) By insuring and keeping insured the payments of such compensation in the State Accident Fund;
- (2) By insuring and keeping insured the payments of such compensation with any stock corporation or mutual association authorized to transact the business of Workers' compensation insurance in this State;
- (3) By participating in a self-insurance group that meets the requirements of Article 48A, Subtitle 44 of the Code;
- (4) By obtaining approval to self-insure pursuant to Section 16A of this article.

Article 101, Section 16A, provides in relevant part:

Any employer who does not, with the approval of the Commission, voluntarily insure the payment of the compensation by one of the methods designated in Section 16(1), (2), or (3) of this Article must furnish satisfactory proof to the Commission of his financial ability to pay the compensation himself, in which case the Commission may, at any time and from time to time in its discretion, require the deposit with the Commission of securities as are accepted by the Circuit Court for Baltimore City for the investment of trust funds and in an amount or amounts to be determined by the Commission, to secure the liability of the employer to pay the insurance protecting the employer against liability for workers' compensation benefits resulting from a catastrophe or disaster, other than from an act of war. If required by the Commission, the policy of insurance shall be in the amount and shall contain the provisions as in

the judgement of the Commission are required to provide security for the the payment of compensation and medical treatment. In order to be informed as to the continued financial responsibility of any employer, the Commission shall require annual reports or at other times as the Commission may deem necessary or advisable, and may examine the employer under oath or make other examination of his business as the Commission may determine. If he should fail to furnish satisfactory proof, or give bond, or deposit securities as required by the Commission, or if he should at any time fail to render satisfactory reports to the Commission or otherwise satisfy the Commission of its continued financial ability to pay the compensation, he shall be subject to the provision of Section 16(1) or (2) of this article, and shall be required by the Commission to insure as provided in Section 16(1) of this Article, unless he, at once, insures voluntarily as provided in Section 16(2) of this article.

Whenever a self-insured employer becomes insolvent, any outstanding obligations shall be paid by the Uninsured Employer's Fund.

Article 48A, Section 608(d) provides:

"Self-insurance group" means a combination of 2 or more employers organized in accordance with this subtitle and the regulations adopted under this subtitle, but does not include groups organized under Article 101, Section 16(3) of the Code.

Article 48A, Section 609 provides in part:

The Commissioner shall adopt regulations to carry out the provisions of this subtitle. The regulations shall include:

- (1) Classifications of businesses and industries, based on the type of activity conducted by the business or industry, within which employers may join together in self-insurance groups;
- (2) As to each classification, a minimum level of contribution which shall be at least \$250,000 in premiums collected from or pledged by members of a group to a fund from which compensation claims shall be paid;
- (3) Conditions under which contributions by members of a self-insurance group may be rebated or temporarily suspended;
- (4) As to each classification, a minimum level of excess insurance coverage that shall be obtained by each group and the requirement that the minimum levels of excess insurance adopted under this section may be satisfied by placing, in a depository designated by the Commissioner, securities in a form and amount prescribed by the Commissioner;
- (5) As to each classification, a minimum surety bond of at least \$100,000 that shall be obtained by each group; and

- (6) As to each administrator or service company, a minimum bond that may be required by the Commissioner in addition to any other bond that may be required.
- (c) Before a self-insurance group may function, it must obtain the Commissioner's approval, including approval of the group's self-insurance agreement.
- (d) Each self-insurance group shall have combined net assets of at least \$1,000,000.
- (e)
  - (1) There shall be a Self-Insurer's Guaranty Fund, administered by the Uninsured Employers' Fund, into which each self-insurance group shall pay an assessment at the same level assessed against other workers' compensation insurers by the Maryland Insurance Guaranty Association under Subtitle 33 of this Article.
  - (2) Whenever a group becomes insolvent, any outstanding obligations of the group shall be paid by the Self-Insurers' Guaranty Fund.
  - (3) If the Self-Insurers' Guaranty Fund become insolvent, any outstanding obligations of an insolvent self-insurance group shall be a joint and several liability of each member of the group.

Article 101, Section 16a, which governs a group of counties or municipalities which want to self-insure, provides:

- (3) For the purpose of this section "employer" includes a group of counties, a group of municipalities, or composed of both counties and municipalities as prescribed by regulation of the Commission.
- (4)(i) The Workers' Compensation Commission shall develop regulations prescribing requirements and procedures for groups of counties, groups of municipalities, or groups composed of both counties and municipalities seeking to establish joint self-insurance coverage. However, to qualify as a group for purposes of this section, a group must prove to the satisfaction of the Commission that it would receive annual gross premiums in an amount of not less than \$250,000.
- (ii) The Workers' Compensation Commission shall provide for advance premium discounts that are competitive with private insurance advance premium discounts.
- (iii) A group that qualifies under the provisions of this paragraph shall obtain excess insurance in amounts prescribed by the Workers' Compensation Commission.

- (5) A group of counties, a group of municipalities, or a group composed of both counties and municipalities may not be self-insured without first receiving a certificate of authority to do business issued by the Workers' Compensation Commission.
- (6) For the purpose of workers' compensation, self-insurers and groups of counties, groups of municipalities, or groups composed of both counties and municipalities which are self-insured pursuant to this paragraph are not subject to the provisions of Article 48A of the Code.
- (7) For the purposes of this subsection, with the approval of its county governing body or governing bodies, the following shall be considered a county or municipality:
  - i. A county board of education;
  - ii. A community college, and
  - iii. A regional community college.
- (8) A self-insurance mechanism established by a county government for workers' compensation insurance coverage under this section may include those units of that county's government that are established or funded by the county government, provided that the Commission has given prior approval for the inclusion or addition to the unit. For purposes of this subparagraph, the following, whether or not funded by a county, shall be considered a unit of that county's government:
  - i. A county board of education;
  - ii. A community college located in the county;
  - iii. A regional community college located in the county;
  - iv. A bicounty or multicounty agency operation in the county;
  - v. A housing agency of the county created under Article 44A of the Code;
  - vi. A revenue authority created by the county or state located in the community; and
  - vii. A municipal corporation located in the county.

## Proceedings

Lt. Governor Melvin A. Steinberg convened the Task Force on Self-Insurance on July 7, 1987. The Task Force held six working meetings, one public hearing, and one voting session prior to adopting its report on February 11, 1988.

The working meetings examined the statutory framework, administration, and operation of self-insurance programs permitted under the laws of the State. Presentations were made to the Task Force on the following programs and issues:

### July 7, 1987

Overview of Self-Insurance  
and Risk Retention Groups

Martha C. Roach  
Deputy Insurance Commissioner

### July 21, 1987

Motor Vehicle Administration  
Self-Insurance Program

Ned S. Kodeck  
Special Assistant to the MVA  
Administrator

Maryland Cab Association

Norman Polovoy - representing  
Maryland Cab Association

### August 11, 1987

Maryland Automobile  
Insurance Fund  
Commercial Coverage

Vincent H. Howley  
Executive Director of MAIF

Workers' Compensation Commission  
Self-Insurance Program

Charles J. Krysiak  
Chairman of WCC  
John H. Newby  
Director of Administration, WCC  
Allen Teitzer  
Self-Insurance Administrator, WCC

Self-Insurers Guaranty Fund

William T.S. Bricker  
Director  
Uninsured Employers Fund

State Accident Fund

Donald W. Potter  
Superintendent of SAF

September 1, 1987

State Treasurer

Insurance Operations

Treasurer Lucille Maurer

Mark Reger, Head of Operations

David Harry, Insurance Manager

Consultants to Self-Insurers  
and Buyers of Commercial Coverage

Rich Schultz

Insurance Buyers Council

Maryland Association of Boards of  
Education-Self-Insurance Program

Maureen Steinke

Executive Director, MABE

Judy Ricker

Insurance Program Manager, MABE

Prince George's County  
Self-Insurance Program

William Brown

Director of Finance for P.G. Co.

Robert Boynton

Risk Manager for P.G. Co.

September 22, 1987

Self-Insurance Requirements  
for Plumbers

Martha C. Roach

Deputy Insurance Commissioner

Judy Donaldson

Deputy Commissioner of

Occupational & Professional

Licensing, DLR

Self-Insurance  
for Nursing Home Facilities

Steve Buckingham, DHMH

After completing five working meetings, the Task Force agreed to survey its members and take testimony at a public hearing on the following self-insurance issues:

I. Philosophical Issues

A. Is there a need for self-insurance in Maryland's regulatory framework?

1. If no, why?

2. If yes, why?

B. What should self-insurance be?

1. Collateralization program? If so, with uniform criteria?

2. Maintenance of actuarially sound reserves?

3. Trust Fund?

4. Other?



- C. 1. Is self-insurance appropriate in the various areas of coverage the Task Force has reviewed:
- i) Motor Vehicle Fleets?
  - ii) Workers' Compensation?
  - iii) General Liability?
  - iv) Surety Bonding?
2. Is self-insurance appropriate for the various clients the Task Force has reviewed:
- i) Governments?
  - ii) Large Utilities and Companies?
  - iii) Transportation Fleets?
  - iv) Churches?
  - v) Plumbers?
  - vi) Electricians?
  - vii) Nursing Homes?
- D. Should the definition of self-insurance be the same for each type of client and type of coverage?

II. Programmatic Issues

- A. Should entities with taxing authority be subject to different procedures than those established for private/non-taxing entities?
- B. How should the eligibility standards for entities to qualify for self-insurance be established? And by whom?
- 1. Task Force?
  - 2. Consultant?
  - 3. Agency?
  - 4. Other?

- C. Is there a problem with the regulatory procedures used currently in the areas the Task Force has examined?

After timely notice of the public hearing was placed in the Maryland Register, a list of issues and an invitation to testify before the Task Force was mailed to all self-insureds on file at the Workers' Compensation Commission, the Motor Vehicle Administration (see Appendix B and Appendix C) and various interested groups and individuals. At the public hearing conducted on October 6, 1987, the Task Force took testimony from the following persons:

1. William Wilson - Maryland Self-Insurers' and Employers' Compensation Association.
2. Betty Hoffmeister - Maryland Self-Insurers' and Employers' Compensation Association
3. Carole Hodge - Westinghouse Corporation
4. Paul Waddell - Westinghouse Corporation
5. Joe Harlan - Maryland Self-Insurers' and Employers' Compensation Association
6. Vic Marno - Marriott Corporation
7. Rudy Rose - Maryland Self-Insurers' and Employers' Compensation Association
8. Beverly A. Powell - Baltimore Gas and Electric Company
9. Bishop Reuben C. Martin - Washington County Mennonite Church Association
10. James Shepherd - Workman's Compensation Group
11. John Bloom - Workman's Compensation Group Self-Insurance Fund
12. Richard Brooks - Risk and Insurance Management Society
13. Dr. Don McKnight - Evangelical Methodist Church of Dublin, Md.
14. Chris Costello - Maryland Chamber of Commerce
15. Louise Beauregard - Christian Services U.S.A.

In addition, written comments and position statements were received from the following:

1. American Telephone and Telegraph Company
2. Bethlehem Steel Corporation
3. Maryland Conservative Mennonite Church
4. Potomac Edison Company
5. Potomac Electric Power Company

On November 10, 1987, the Task Force conducted its final working session. At this meeting, the Task Force staff summarized testimony and written comments on self-insurance issues received from Task Force members and the public. In addition, staff presented the results of its research on automobile self-insurance programs in other states (Appendix D). This summary of testimony and research was used by the Task Force in developing its final recommendations.

## Chapter 2

### OVERVIEW

#### State's Liability

When examining Maryland's various self-insurance programs, we must necessarily consider whether the State could be held liable for damages in tort for alleged negligence in its administration of one or more of these programs. For example, if an employer had insufficient assets to gain approval for self-insurance under the Workers' Compensation Program, but mistakenly gained such approval because of an error on the part of the State, could the State be held liable on a negligence theory assuming its actions were the proximate cause of the complainant's damages?

It is the view of the Task Force, based upon research conducted by its staff, that the answer to this question is clearly "no." This is supported by a two-step analysis. If the State's regulatory action is found not to have been negligent, the inquiry ends for the State has committed no wrong. If on the other hand the State's action is found to have been negligent, a further inquiry must be made to determine the extent, if any, that the State has waived its sovereign or governmental immunity.

To sustain a theory of tort negligence against the State for failure of its regulatory process, one must first find that the State owed a "duty" to the public to regulate self-insurance programs. If there was no "duty," the State should not be found negligent.

The case law on the issue of a state's duty to regulate indicates that the state would be found not to have a "duty" to regulate self-insurance. In Commonwealth of Kentucky Dept. of Banking and Securities v. Brown, 605 S.W.2d 497 (Ky.1980), the Court found that the Kentucky Department of Banking and Securities was derelict in not ascertaining and not reporting the true conditions of the records of two building and loan associations as they were required to do under a Kentucky statute. However, the Court found that the state was not liable for this regulatory failure.

The Court stated:

Governmental bodies simply are not the same animals as individuals and private corporations. As a result, the traditional duty analysis applied in actions for negligence against individuals is not appropriate in suits against governmental bodies.

There is no public policy requiring government to guarantee the success of its efforts. When the governmental entity is performing a self-imposed protective function...the individual citizen has no right to demand recourse against it though he is injured by its failure to efficiently perform such function. Any ruling to the contrary would tend to constitute the Commonwealth an insurer of the quality of services its many agents perform and serve only to stifle government's attempts to provide needed services to the public which could not otherwise be effectively supplied.

We, of course, concede that the State may act imperfectly at times; but such is the risk which this Court believes is the natural concomitant of our form of government. We perceive that the public interest is better served by a government which can aggressively seek to identify and meet the current needs of the citizenry, uninhibited by the threat of financial loss should its good faith efforts provide less than optimal - or even desirable - results.

In accord is Duran v. City of Tucson, 20 Ariz. App.22, 500P.2d 1059 (1973).

As stated previously, if the State is found not to be negligent, the extent of the State's sovereign immunity does not become an issue. However, assuming for the purpose of examining these issues that the State is found to be negligent, the remaining issue concerns the extent of the State's sovereign immunity.

The State's waiver of sovereign immunity is codified in the State Government Article, Sections 12-101 et. seq., (Maryland Tort Claims Act). Section 12-104 (a) states in its entirety:

Subject to the exclusions and limitations in this subtitle, the immunity of the State and of its units is waived as to a tort action, in a court of the State, to the extent of insurance coverage under Title 9 of the State Finance and Procurement Article.

Title 9 of the State Finance and Procurement Article, titled State Insurance Program, provides in Section 9-105(c):

To the extent that funds are available in the State budget, the Treasurer shall provide sufficient self-insurance, purchased insurance, or both to cover the liability of the State and its units and personnel under the Maryland Tort Claims Act.

Title 9 appears to indicate the General Assembly's intention that the budget provide funding for such insurance. State Finance and Procurement Article, Section 9-102 (b)(1) provides that "the General Assembly intends that the State: insure against loss, damage, and liability as fully permitted by law or agreement..." In addition, Section 9-103(b)(3) of the same Article provides that "the General Assembly intends that the State budget include sufficient General Fund appropriations to provide in the State Insurance Trust Fund a reserve that the Treasurer considers adequate to cover losses under 9-105 of this Title" (The Maryland Tort Claims Act). Therefore, when such an appropriation is made, and insurance coverage is provided, the State may be held liable to the extent of the insurance coverage. In Kee v. State Highway Admin., 68 Md. App. 473 (1986), vacated on other grounds, 309 Md. 523 (1987), the Court of Special Appeals went further and held that the State could be held liable if an appropriation had been made but the Treasurer failed to provide coverage, if insurance coverage, either through the purchase of commercial insurance, self-insurance, or a combination of both was available within the appropriation made by the Legislature. The Court stated that if an appropriation is made and insurance is not provided, the State bears the burden of establishing that such insurance was not available within the appropriation limits.

In addition, State Government Article, Section 12-104, provides that the Treasurer may, under certain conditions, pay from the State Insurance Trust Fund all or part of that portion of a tort claim which exceeds the coverage obtained under Title 9 of the State Finance and Procurement Article.



## Chapter 3

### RECOMMENDATIONS

#### RECOMMENDATION 1

THE MOTOR VEHICLE ADMINISTRATION SHOULD REQUIRE ALL SELF-INSURED TO PROVIDE CLEARLY DELINEATED CLAIMS RESERVE INFORMATION.

Typically, claims reserves are included under a general heading in an entity's financial statement and it is not possible for the Motor Vehicle Administration's program administrator to determine the amount which has been reserved to meet automobile liability claims. Without specific reserve information it is difficult for the Motor Vehicle Administration's program administrator to assess the ability of a self-insured to meet anticipated claims. The Task Force recommends that the Motor Vehicle Administration require applicants for self-insurance to provide this needed information.

#### RECOMMENDATION 2

THE MOTOR VEHICLE ADMINISTRATION SHOULD ESTABLISH A COMAR REQUIREMENT THAT APPLICANTS FOR SELF-INSURANCE PROVIDE THE MOTOR VEHICLE ADMINISTRATION WITH AN ANNUAL CERTIFIED FINANCIAL STATEMENT.

Thirty seven states require applicants to submit annual certified financial statements as a prerequisite to obtaining automobile self-insurance. Currently, the Motor Vehicle Administration's Application Form (FR-1) indicates that a certified financial statement should accompany the completed application. There has not been uniform compliance with this reporting requirement.



The Workers' Compensation Commission has established a similar requirement in COMAR for all applicants who desire to self-insure for workers' compensation insurance. With this in mind, and in order to bring Maryland's financial reporting requirements in line with the overwhelming majority of other states, the Task Force recommends that the Motor Vehicle Administration amend COMAR Section (11.18.02.01) to require all applicants to submit an annual certified financial statement.

### RECOMMENDATION 3

THE OWNERSHIP REQUIREMENTS FOR AUTOMOBILE SELF-INSURANCE (COMAR 11.18.02.01) SHOULD REMAIN AS CURRENTLY PROVIDED AND SELF-INSURANCE CERTIFICATION SHOULD BE DENIED TO ANY ENTITY NOT IN COMPLIANCE WITH THIS REQUIREMENT.

COMAR Section 11.18.02.01 currently permits "...any person, in whose name more than 25 vehicles are registered in this State, as owner or lessee..." to qualify as a self-insurer (providing other requirements are also met). The Task Force believes this is an appropriate requirement.

This requirement is essential and should be construed to prevent individuals from entering into fictitious groups or imaginative contractual arrangements to avoid the necessity of obtaining third party coverage for automobile liability.

In the past, some entities may have received certification for self-insurance despite the fact they did not own or lease the vehicles for which they obtained self-insurance certification. The Task Force sees the need to correct this situation. The Motor Vehicle Administration's program administrator is urged to review The Motor Vehicle Administration's roster of self-insureds and deny renewal of certification to any which do not meet the ownership requirement established in COMAR.

#### RECOMMENDATION 4

THE MINIMUM FLEET SIZE REQUIRED FOR AUTOMOBILE SELF-INSURANCE SHOULD REMAIN AS CURRENTLY PROVIDED (MORE THAN 25 VEHICLES - COMAR 11.18.02.01) AND SELF-INSURANCE CERTIFICATION SHOULD BE DENIED TO ANY ENTITY WHICH HAS 25 OR FEWER VEHICLES.

Research indicates that 32 other states have adopted the same minimum fleet size requirement established by Maryland. The Task Force believes this is an appropriate requirement.

In the past some entities may have received certification for self-insurance although they failed to meet this requirement. As a result, the Task Force recognizes the need for the Motor Vehicle Administration's program administrator to review that agency's self-insureds and to deny renewal of certification to any which have a fleet of 25 or fewer vehicles.

#### RECOMMENDATION 5

THE MOTOR VEHICLE ADMINISTRATION SHOULD REVIEW ITS CURRENT VEHICLE INFORMATION REQUIREMENTS AND INCORPORATE INTO COMAR THOSE WHICH ARE DETERMINED TO BE NECESSARY FOR EFFECTIVE PROGRAM ADMINISTRATION.

Traditionally, all relevant information about insured vehicles must be provided to applicant's insurance carrier. Currently, the Motor Vehicle Administration's application form (FR-1) for self-insurance requests applicants to submit the following information: the number of vehicles to be insured, the number leased, the vehicle year, make, identification number, title number, and tag number. The Task Force believes that the Motor Vehicle Administration, with the assistance of a consultant, should review these requirements, and if necessary, amend COMAR to require applicants to provide that vehicle information necessary to properly administer its self-insurance program.

## RECOMMENDATION 6

### THE MOTOR VEHICLE ADMINISTRATION SHOULD ESTABLISH A MECHANISM TO ENSURE ADMINISTRATIVE REVIEW AND OVERSIGHT OF ITS SELF-INSURANCE CERTIFICATION AND SECURITY DECISIONS.

At the present time the Motor Vehicle Administration has assigned one person to certify self-insureds and determine security requirements. There is no administrative review of his decisions. To assure due process and to eliminate the potential for abuse this situation creates, the Task Force recognizes the need for the Motor Vehicle Administration to provide an appropriate review mechanism.

The structure utilized at the Workers' Compensation Commission provides an appropriate model which can be used at the Motor Vehicle Administration. The Workers' Compensation Commission provides an Office of Self-Insurance responsible for the Commission on action it should take in the areas of initial self-insurer certificates, terms and conditions for continued self-insurance, and changes in a self-insured status which would trigger cancellation.

To implement this recommendation, a board of review should be established at the Motor Vehicle Administration with similar authority and responsibility as the Workers' Compensation Commission currently has in the area of self-insurance.

## RECOMMENDATION 7

### THE MOTOR VEHICLE ADMINISTRATION SELF-INSURANCE PROGRAM SHOULD ESTABLISH A FEE STRUCTURE THAT WOULD ALLOW THE PROGRAM TO BECOME SELF-SUPPORTING.

Research indicates that other states (including New York, Michigan, Minnesota, and Texas) have adopted a fee structure to support their automobile self-insurance programs.

In Maryland, the self-insurance program administered by the Workers' Compensation Commission charges applicants for self-insurance an initial fee of \$250 and an annual maintenance fee of \$500.

The Task Force believes it appropriate that the costs of administering Maryland's Automobile self insurance program be borne by the program's participants. The Task Force anticipates that this can be accomplished through a moderate fee schedule.

#### RECOMMENDATION 8

THE MOTOR VEHICLE ADMINISTRATION SHOULD DEVELOP AND UTILIZE A FINANCIAL VIABILITY INDEX AND/OR OTHER SPECIFIC ASSESSMENT CRITERIA TO EVALUATE APPLICANTS FOR SELF-INSURANCE.

Absent these measures, decisions to grant or deny self-insurance, or to require security could be found by the courts to be arbitrary and capricious. Unlike the Workers' Compensation Commission, which has already developed an assessment methodology (Appendix E), the Motor Vehicle Administration appears to lack the in-house capability to develop similar measures. Consequently, the Task Force foresees the need for The Motor Vehicle Administration to obtain this expertise, contractually if necessary.

## RECOMMENDATION 9

THE WORKERS' COMPENSATION COMMISSION AND THE MOTOR VEHICLE ADMINISTRATION SHOULD REQUIRE SELF-INSURED TO REPORT ANY SUBSTANTIAL DIVESTITURE AND/OR ACQUISITION WITHIN 30 DAYS OF THE EVENT. THIS REQUIREMENT SHOULD BE PLACED IN APPROPRIATE SECTIONS OF COMAR.

The current business climate has spawned a number of buyouts of self-insured employers. The most frequent is the leveraged buyout (LBO), because of the material impact on the balance sheet and income statement of the acquired company. Situations have occurred where a multi-state employer, with a billion dollar net worth and \$250,000,000 in net annual income, converted to an entity with no net worth and insufficient cash flow to meet debt payments as they became due. In such a situation, any attempt to cancel self-insurance, or to substantially raise the required security is subject to challenge.

It is not always necessary or desirable to automatically cancel an employer's self-insurance because the business enterprise was bought out. The resulting entity may still be viable and meet the qualifications for self-insurance. In order to make the appropriate determination self-insurers should be required to notify the Workers' Compensation Commission and the Motor Vehicle Administration within 30 days after significant acquisition or divestiture had occurred.

## RECOMMENDATION 10

### THE WORKERS' COMPENSATION LAW SHOULD BE AMENDED TO REMOVE CONTRADICTORY LANGUAGE REGARDING MINIMUM SECURITY DEPOSITS.

The 1987 session of the General Assembly enacted Senate Bill 912, now chapter 645 of the Acts of 1987, which amended several sections of Article 101 to provide self-insured employers with Uninsured Employers' Fund (UEF) coverage, in effect, making it a guaranty fund. New language inserted in Section 90(a)(2) of Article 101 provides that UEF would be liable if a self-insured employer fails to deposit sufficient securities to cover workers' compensation claims "but in no event less than \$100,000." This language conflicts with Article 10, Section 16A (a)(1) which states, "the Workers' Compensation Commission may, at any time and from time to time in its discretion, require the deposit with the Commission of securities as are accepted by the Circuit Court for Baltimore City for the investment of trust funds and in an amount or amounts to be determined by the Commission, to secure the liability of the employer to pay compensation specified in this article."

This provision permits the Commission to require as little or as great a deposit of securities as it believes is warranted.

The Task Force feels that the language requiring \$100,000 in deposited securities is not only inconsistent with other sections of Maryland law, but is an inappropriate policy because of its inflexibility. Discretion, and flexibility within a properly accountable framework, is the proper goal for State regulation of self-insurance.

## RECOMMENDATION 11

THE AUTHORITY TO REGULATE PRIVATE GROUP SELF-INSURANCE FOR WORKERS' COMPENSATION SHOULD BE TRANSFERRED FROM THE INSURANCE DIVISION TO THE WORKERS' COMPENSATION COMMISSION.

In 1986 the General Assembly enacted legislation authorizing the creation of self insurance groups for the purpose of covering private employers for Workers' compensation. The legislation placed the responsibility for regulatory oversight with the Insurance Commissioner. However, another self-insurance group for workers' compensation coverage, (Maryland Association of Boards of Education Workers' Compensation Self- Insurance Fund) is currently regulated by the Workers' Compensation Commission.

The Task Force believes it is inconsistent to divide authority in this fashion and recommends that regulatory authority be consolidated under the Workers' Compensation Commission. The Task Force notes that the Commission has an existing Office of Self-Insurance which generally appears to be working well and which could assume this additional regulatory responsibility.

## RECOMMENDATION 12

THE TERM "BECOMES INSOLVENT", AS USED TO DETERMINE THE UNINSURED EMPLOYER'S FUND LIABILITY SHOULD BE AMENDED TO "DEFAULTS ON PAYMENT OF A WORKERS' COMPENSATION CLAIM DUE TO THE FINANCIAL INABILITY OF THE SELF-INSURED ENTITY TO PAY THE CLAIM."

The 1987 Session of the General Assembly enacted Chapter 645 of the Laws of 1987 providing self-insured employers with Uninsured Employers Fund (UEF) coverage, in essence making it a guaranty fund.

By creating this protection, Maryland joins 21 other states which have guarantee funds to assure payment to injured workers in the event of bankruptcy or insolvency.

The law as enacted could be more specific in defining where the UEF's obligation begins. Article 102, Section 16A(9) states "whenever a self-insured employer becomes insolvent, any outstanding obligations shall be paid by the Uninsured Employers Fund." Only one other state, Oregon, uses insolvency as the point at which a guarantee fund incurs an obligation. Eight states use a standard of determined financial insolvency and benefit default as the trigger to guarantee fund liability.

The establishment of a structure to stand behind self-insurers in the event of inability to pay a workers' compensation claim was a prudent effort on the part of the 1987 General Assembly. This recommendation should make that structure even stronger.

#### RECOMMENDATION 13

ARTICLE 101, SECTION 16A(a)(2) OF THE WORKERS' COMPENSATION LAW SHOULD BE AMENDED TO REMOVE THE \$500 CAP ON THE ANNUAL FEE PAID BY SELF-INSURED ENTITIES TO ADMINISTER THE SELF-INSURANCE PROGRAM; THE FEE STRUCTURE SHOULD BE PROVIDED FOR IN APPROPRIATE SECTIONS OF COMAR.

The self-insurance program administered by the Workers' Compensation Commission charges an initial applicant's fee of \$250 and an annual fee to all self-insureds of \$500. The current fee structure no longer provides sufficient funds to support self-funding of the self-insurance program at the Commission.

The Task Force believes that the costs of administering the Workers' Compensation Self-Insurance Program should be borne by the program participants.



## RECOMMENDATION 14

### THE STATUTORY REQUIREMENT THAT THE COUNTY BOARDS OF EDUCATION SHOULD CARRY LIABILITY INSURANCE SHOULD BE MODIFIED TO REMOVE EXISTING POOLS FROM THE REGULATION OF THE INSURANCE COMMISSIONER.

Maryland statutes now provide that governmental entities may pool together to provide workers' compensation insurance, general liability insurance and property insurance. There are currently three pools operating in the state:

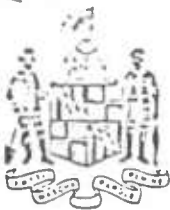
1. Maryland Association of Boards of Education Workers' Compensation Group Self-Insurance Fund.
2. Maryland Association of Boards of Education Group Liability Insurance Pool.
3. Local Government Insurance Trust.

The workers' compensation insurance pool is authorized by Article 101, Section 16, and is regulated by the Workers' Compensation Commission.

The liability and property insurance pools are governed by Article 48A, which excludes such pools from the business of insurance and therefore from the regulatory authority of the Insurance Commissioner. However, Education Article, Section 4-105, provides that Boards of Education may self-insure under regulations promulgated by the Insurance Commissioner. To date, the Insurance Commissioner has not promulgated regulations for either individual Boards of Education which have chosen self-insurance or the Boards of Education Liability Pool. There are two policy issues which arise with regard to this matter:

1. Whether the Boards of Education should be regulated by the Insurance Commissioner while similarly situated entities; that is, counties and municipalities, conduct the same type of insurance pool without regulation.
2. Whether a pooling mechanism is in fact the "self-insurance" contemplated by Section 4-105, or whether it should be considered insurance.

The Task Force believes it is inconsistent with the regulatory framework envisioned in this report to have the Board of Education Liability Pool regulated by the Insurance Commissioner.



Appendix A  
STATE OF MARYLAND  
OFFICE OF THE GOVERNOR

WILLIAM DONALD SCHAEFER  
GOVERNOR

IN REPLY REFER TO:

G-06

April 27, 1987

The Honorable Melvin A. Steinberg  
Lieutenant Governor  
State House  
Annapolis, Maryland 21401

Dear Lt. Governor Steinberg:

Self-Insurance has become an increasingly popular alternative to statutory insurance requirements. Many diverse groups--plumbers, boards of education and employers subject to worker's compensation insurance--are permitted to self-insure under Maryland law. Recent changes in federal law have significantly increased the availability of self-insurance. There is currently, however, no comprehensive approach or oversight to address this growing industry. Before our agenda can be planned, important policy and regulatory issues must be considered. I am, therefore, pleased to appoint you the Chairman of the Governor's Blue Ribbon Task Force on Self-Insurance.

The Task Force is requested to undertake an examination of the following issues:

- (1) The effectiveness of self-insurance as an alternative to traditional insurance requirements;
- (2) The proper State response to insure viable and efficient self-insurance programs including any required administrative or legislative reforms necessary to effect this response;
- (3) The feasibility and appropriateness of providing for the centralized administration of all self-insurance programs; and
- (4) The development of standards and criteria for evaluating self-insurance programs.

The Honorable Melvin A. Steinberg  
April 27, 1987  
Page 2

The Task Force should have its study and recommendations completed and prepared for submission to the Governor and the General Assembly of Maryland on or before October 1, 1987. A copy of the membership and your commission are enclosed.

I thank you for your willingness to devote the time and effort necessary to do this important task. Service by public-minded citizens like you enable us to meet future challenges with accomplishment and to facilitate our common goal of making Maryland better.

I would appreciate your contacting the members of the Task Force to establish the date and location of your first meeting.

Sincerely,

Governor

Appendix B

STATE OF MARYLAND

CHARLES J. KRYSIAK  
CHAIRMAN  
SIDNEY W. ALBERT  
L. DOUGLAS JEFFERSON  
JACQUES E. LEEDS  
J. MAX MILLSTONE  
EDWARD A. PALAMARA  
ROBERT S. REDDING  
STEPHEN ROSENBAUM  
G. JOSEPH SILLS  
CARMEL J. SNOW  
COMMISSIONERS

JOHN H. NEWBY  
SECRETARY - DIRECTOR OF ADMINISTRATION



**WORKERS' COMPENSATION COMMISSION**

6 NORTH LIBERTY STREET  
BALTIMORE, MD. 21201-3785  
(301) 333-4700

SELF INSURERS IN MARYLAND

JANUARY 29, 1988

APA TRANSPORT  
AT&T TECHNOLOGIES, INC.  
AMERICAN SCRAP CORPORATION  
AMERICAN TELEPHONE & TELEGRAPH  
AMOCO CORPORATION  
AMSTED INDUSTRIES, INC.  
ANNE ARUNDEL COUNTY  
ANNE ARUNDEL COUNTY BOARD OF EDUCATION  
ARCHDIOCESE OF BALTIMORE  
ARCHDIOCESE OF WASHINGTON  
ARKANSAS BEST CORPORATION  
ASPLUNDH TREE EXPERT COMPANY  
THE BALTIMORE SUN COMPANY  
BALL CORPORATION  
BALTIMORE COUNTY & BOARD OF LIBRARY TRUSTEES  
BALTIMORE COUNTY BOARD OF EDUCATION  
BALTIMORE GAS & ELECTRIC COMPANY  
BELL ATLANTIC NETWORK SERVICES  
BETHLEHEM STEEL CORPORATION-SPARROWS POINT PLANT  
BETHLEHEM STEEL CORPORATION-BALTIMORE YARD KEY HIWAY  
BETHLEHEM STEEL CORPORATION-SPARROWS POINT SHIPYARD  
BORDEN, INC.  
BROWNING FERRIS INDUSTRIES  
CAROLINA FREIGHT CARRIERS  
C&P TELEPHONE COMPANY OF MARYLAND  
CERTAINTED CORPORATION  
COLONIAL PIPELINE  
C&P TELEPHONE COMPANY (WASHINGTON D.C.)  
CHEVRON U.S.A.  
CHICAGO METALLIC  
CHURCH HOME & HOSPITAL  
CONARGA POULTRY COMPANY  
CONOCO, INC.  
CONSOLIDATED COAL SALES  
CONSOLIDATED FREIGHTWAYS  
DIAL CORPORATION

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SELF-INSURERS IN MARYLAND  
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DELMARVA POWER & LIGHT COMPANY  
DONN INC  
E. I. DU PONT DE NEMOURS  
EASTMAN KODAK  
EQUITABLE BANCORPORATION  
FEDERAL EXPRESS CORPORATION  
FIRST MARYLAND BANCORPORATION  
FOOD LION INC.  
FORD MOTOR COMPANY  
(FOREMOST) MCKESSON  
FRANKLIN SQUARE HOSPITAL  
GENERAL MOTORS CORPORATION  
GENSTAR STONE PRODUCTS COMPANY  
GEORGIA-PACIFIC CORPORATION  
GIANT FOOD  
GLATFELTER PULPWOOD COMPANY  
GOOD SAMARITAN HOSPITAL  
GRAND UNION  
GREAT A&P TEA COMPANY  
GREATER BALTIMORE MEDICAL CENTER  
GREYHOUND FOOD MANAGEMENT  
HARFORD COUNTY  
HOWARD COUNTY BOARD OF EDUCATION  
HOWARD COUNTY  
HOWARD COUNTY GENERAL HOSPITAL  
GEORGE HYMAN CONSTRUCTION COMPANY  
INTERNATIONAL PAPER COMPANY  
JOHNS HOPKINS HOSPITAL  
JOHNS HOPKINS UNIVERSITY  
K-MART  
KODAK PROCESSING LABORATORY  
MAPCO  
MARRIOTT CORPORATION  
MARYLAND GENERAL HOSPITAL  
MARYLAND NATIONAL CORPORATION  
MATLACK  
MAY DEPARTMENT STORES  
MAYOR & CITY COUNCIL OF BALTIMORE  
MEMORIAL HOSPITAL OF EASTON  
MERCK & COMPANY  
MERCY HOSPITAL  
MONTGOMERY COUNTY  
MONTGOMERY COUNTY COMMUNITY COLLEGE  
MONTGOMERY COUNTY BOARD OF EDUCATION  
MAYOR & CITY COUNCIL OF ROCKVILLE  
MARYLAND NATIONAL CAPITAL & PARK PLANNING COMMISSION  
MONTGOMERY GENERAL HOSPITAL  
MORTON THIOKOL, INC.

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NABISCO INC.  
NORDSTROM INC.  
PATAPSCO & BACK RIVERS RAILROADS  
PERDUE FARMS  
POTOMAC EDISON COMPANY  
POTOMAC ELECTRIC POWER  
PPG INDUSTRIES  
PRINCE GEORGE'S COUNTY ETAL  
PRINCE GEORGE'S COUNTY BOARD OF EDUCATION  
PRINCE GEORGE'S COUNTY COMMUNITY COLLEGE  
PRINCE GEORGE'S COUNTY LIBRARY  
PROCTOR & GAMBLE MANUFACTURING  
ROADWAY SERVICES  
ROLLINS INC.  
RYDER SYSTEM INC.  
SETONAL REGIONAL HEALTH SYSTEM (SACRED HEART HOSPITAL)  
SAFEWAY STORES INC.  
ST. AGNES HOSPITAL  
ST. JOSEPH HOSPITAL  
SHELL OIL COMPANY  
SHEPPARD & ENOCH PRATT HOSPITAL  
SHERWIN WILLIAMS  
SHONEY'S INC.  
SINAI HOSPITAL  
STOP & SHOP COMPANIES  
SOLO CUP COMPANY  
SOUTH BALTIMORE GENERAL HOSPITAL  
SOUTHERN MARYLAND ELECTRIC CO-OPERATIVE  
SUBURBAN HOSPITAL ASSOCIATION  
UNION MEMORIAL HOSPITAL  
UNION OIL OF CALIFORNIA  
UNITED AIRLINES  
UNITED IRON & METAL  
UNITED STATES GYPSUM COMPANY  
VULCAN MATERIALS  
WASHINGTON ADVENTIST HOSPITAL  
WASHINGTON COUNTY  
WASHINGTON COUNTY HOSPITAL  
WASHINGTON GAS LIGHT  
WASHINGTON METRO AREA TRANSIT AUTHORITY  
WASHINGTON POST  
WASHINGTON SUBURBAN SANITARY COMMISSION  
WESTERN-SOUTHERN LIFE INSURANCE  
WESTINGHOUSE ELECTRIC CORPORATION

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SELF-INSURERS IN MARYLAND  
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WESTVACO CORPORATION  
WEYERHAEUSER CORPORATION  
YELLOW FREIGHT SYSTEMS

TOTAL SELF-INSURERS 124

GROUP SELF-INSURER

MARYLAND ASSOCIATION OF BOARDS OF EDUCATION  
WORKERS' COMPENSATION GROUP SELF-INSURANCE FUND

TOTAL GROUP SELF-INSURERS 1

Appendix C  
Motor Vehicle Administration

MARYLAND SELF-INSURERS

Action Auto Rental, Inc  
Agency Rent-A-Car  
American Landcruisers, Inc  
American Telephone & Telegraph Co  
Amoco Oil Company  
Anne Arundel County  
Archdiocese of Washington  
Association of Independent Taxi Operators, Inc  
Avis, Inc. & Subsidiaries  
Baltimore County Government and Library Trustees  
Baltimore County Board of Education  
Baltimore Gas & Electric Company  
Barwood, Inc t/a Potomac Insurance Services  
Bethlehem Steel Corporation  
Board of Education of Prince George's County  
Browning-Ferris, Inc  
Capitol Cab Cooperative Association, Inc  
Chesapeake & Potomac Telephone Company of Maryland  
Chevron U.S.A., Inc and Subsidiaries  
City of Annapolis  
City of Rockville  
County Commissioners of Charles County  
CSX Transportation  
Delmarva Power & Light Company  
Enterprise Leasing Company  
Evangelical Methodist Church  
Firestone Tire & Rubber Company  
First Washington Insurance Company  
Fleet Delivery Service of Baltimore  
George Transfer  
Harford County Government  
Hertz Corporation  
Howard County Government  
Independent Taxi Owners Association, Inc  
Individual Owners t/a Arrow Cab Company  
Local Government Insurance Trust  
Maryland Association of Boards of Education  
Maryland-National Capital Park & Planning Commission  
Maryland Conservative Mennonite Church  
Mayor and City Council of Baltimore City  
MET Electrical Testing Company  
Montgomery County Government  
National Car Rental System, Inc  
North American Van Lines, Inc  
Philadelphia Electric Company  
PIE Nationwide, Inc  
Potomac Edison Company

- Continued -



MARYLAND SELF-INSURERS

Potomac Electric Power Company  
Prince George's County Government  
Rapid Rentals d/b/a Budget Rent-A-Car  
Rental Tools & Equipment Company  
Roadway Express, Inc  
Rollins, Inc et al  
Royal Taxicab Association, Inc t/a Insurance Securities, Inc  
St. Mary's County  
Sun Cab Company  
State of Maryland/Maryland Auto Fleet  
Thurston Motor Lines, Inc  
Taxiservice Associates, Inc and Sun Limousine Service  
Victory Express, Inc  
Washington County Board of County Commissioners  
Washington County Mennonite Church Association  
Washington Gas Light Company  
Washington Suburban Sanitary Commission  
Yellow Cab Company  
Yellow Freight System, Inc

# Appendix D Automobile Self-Insurance/Reporting Requirements

STATE	FINANCIAL STATEMENT	LOSS HISTORIES	BALANCE SHEET OR CPA CERT. ANNUAL STATE.	CURRENT VEHIC.LIST	PROF./LOSS STATEMENT	RESERV. FUNDING INFO	CLAIMS INVEST. ADJ.	PROOF OF ABILITY TO PROC/PAY	EXCESS COVERAGE	EVID. OF INCORP.
Alabama	no	3 yrs	yes	yes	yes	no	no	no	no	no
Alaska	no	3 yrs	yes	yes	yes	no	no	no	no	no
Arizona	no	3 yrs	yes	yes	yes	yes	yes	no	no	no
Arkansas	curr.	no	no	yes	no	no	no	no	no	no
Calif.	cpa, 3yrs	3 yrs	3 yrs	no	3yrs, cpa	no	no	no	no	no
Colorado	no	no	yes	no	no	no	no	no	no	no
Conn.	no	3 yrs	no	yes	no	no	no	no	no	no
Del.	curr.	no	no	yes	no	no	no	yes	no	no
D.C.	3yrs	5 yrs	3yrs	yes	no	no	no	no	no	no
Florida	cpa, curr.	no	yes	(b)	3yrs, cpa	no	no	no	yes	yes
Georgia	cpa, curr.	3yrs	yes	(c)	no	no	no	no	no	no
Hawaii	cpa, (a)	3yrs	no	(c)	yes	no	no	no	no	no
Idaho	cpa, curr.	no	no	yes	no	no	no	yes	no	no
Illinois	cpa, curr.	no	no	yes	no	no	no	no	no	no
Indiana	cpa, curr.	4 yrs	no	yes	no	no	no	no	no	no
Iowa	cpa, curr.	3yrs	yes	yes	yes	no	no	no	no	no
Kansas	no	no	yes	yes	yes	no	no	no	no	no
Kentucky	no	no	yes	yes	yes	no	no	no	no	no
Louisiana	curr.	no	yes	no	no	no	yes	yes	no	no
Maine	curr.	no	no	yes	no	no	no	no	no	no
Maryland	cpa, curr.	3yrs	no	yes	no	no	no	no	no	no
Mass.	no	no	no	yes	cpa	no	no	no	list any	no
Michigan	curr.	no	no	no	no	no	no	no	no	no
Minnesota	curr.3,(d)	4yrs	yes	(b)	no	no	no	no	proof of	no
Miss.	no	no	no	no	no	no	no	no	no	no
Missouri	cpa, 5yrs	3 yrs	yes	yes	yes	yes	yes	no	no	no
Montana	no	3yrs	5yrs	yes	no	no	no	no	no	no
Nebraska	curr.	no	yes	yes	yes	no	yes	no	no	no
Nevada	no	no	no	no	no	yes	yes	no	no	no
New Hamp.	no	no	yes	yes	yes	no	no	no	no	no
New Jersey	no	no	no	no	no	no	no	no	no	no
New York	curr.	4yrs	yes	yes	no	no	no	no	no	yes
North Car.	no	3yrs	yes	yes	yes	yes	yes	no	no	no
North Dak.	no	3yrs	yes	yes	yes	no	no	no	no	no
Ohio	cpa, curr.	3yrs	no	yes	yes	no	no	no	no	no
Oklahoma	cpa, curr.	2yrs	no	no	no	no	no	no	no	no
Oregon	no	3 yrs	no	yes	cpa	no	no	no	no	no
Penn.	no	4 yrs	yes	yes	yes	yes	no	no	no	no
Rhode Is.	no	no	yes	no	no	yes	no	no	no	no
South Car.	cpa, curr.	3yrs	yes	yes	no	yes	no	no	no	no
Tenn.	no	3 yrs	yes	yes	cpa	no	no	no	no	no
Texas	cpa, curr.	3yrs	no	yes	yes	yes	no	no	no	no
Utah	no	no	no	yes	cpa	yes	no	no	no	no
Vermont	no	no	yes	yes	n-	no	yes	no	no	no
Virginia	cpa, curr.	3yrs	no	no	no	yes	yes	no	no	no
Wash.	no	3yrs	yes	yes	cpa	yes	yes	no	no	no
West Va.	curr.	no	yes	yes	no	yes	no	no	no	no
Wisconsin	no	3yrs	no	yes	yes	yes	no	no	no	no
Wyoming	curr.	no	yes	yes	no	yes	no	no	no	no

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Explanation:

- = must provide proof of solvency
- = must only specify number of vehicles
- = transcript of title listing for each vehicle
- = parent company

ansas requires development of a reporting system  
ew York requires description of a safe driver program  
ew Jersey requires a certified statement from each partner

Source: NIS Manual

# Appendix D

## Survey of Fleet Self-Insurance Financial Requirements

<u>State*</u>	<u>Financial Requirements</u>	<u>Rationale for Financial Requirements***</u>
Arkansas (26)**	\$65,000 in liquid assets to self-insure bodily injury and property damage liability. \$50,000 to self-insure for bodily injury. \$15,000 for property damage only.	The basis for Arkansas' financial requirements could not be positively determined, but it is supposed they are based upon the amount needed to comply with minimum liability insurance requirements.
California (26)	Minimum net worth of \$575,000 or \$35,000 deposit.	The basis for California's financial requirements could not be determined.
Connecticut (26)	Bond of a surety company authorized to do business in Connecticut or deposit in cash, or securities of the type which can be legally purchased by savings banks or trust funds, based on the following schedule: 1, 2, 3, or 4 vehicles, \$50,000, \$60,000, \$65,000, and \$70,000, respectively; 5 to 100 vehicles, \$70,000 plus \$1,000 for each vehicle over 100; over 150 vehicles, \$191,000 plus \$250 for each vehicle over 150. In addition, security in an amount equal to unpaid claims is required.	Connecticut's financial requirements are based upon the amount needed to comply with minimum liability insurance requirements.
Delaware (16)	Opinion letter from applicant's accountant that applicant could satisfy a \$1,500,000 judgement without applicant's liabilities exceeding its assets.	The basis for Delaware's financial requirements could not be determined, but they are consistent with those in other liability areas.

\* Note: The states listed are those which have stipulated minimum financial requirements for self-insurance listed in the NILS Manual.

\*\* Note: Numbers in parentheses is minimum number of vehicles needed to qualify for fleet coverage.

\*\*\* Note: Provided by fleet self-insurance administration in other states.

Source: 1986 Auto Self-Insurance Manual - NILS Publishing Company.

State

Florida  
(1)

Option A:

Option B:

Financial Requirements

There are now two ways a company, partnership, association, etc., can participate in the state's motor vehicle self-insurance program:

Possesses a net unencumbered worth of at least \$40,000 for the first vehicle and \$20,000 for each vehicle thereafter.

Possesses a net unencumbered worth of at least \$40,000 for the first vehicle in the amount in the columns below as actuarially set by the Florida Insurance Department for each vehicle thereafter and proof of excess insurance coverage.

Type	\$25,000		\$50,000		\$100,000	
	Retention		Retention		Retention	
Taxi	\$4,600*		\$5,658		\$6,900	
Limousine	2,300*		2,829		3,450	

\* These amounts include a surcharge of 45% because the vehicles are exempt from the Florida Motor Vehicle No-Fault Law. (Personal Injury Protection coverage only).

The Florida retention schedule also covers buses, vans, and trucks.

It should also be noted that individuals with net unencumbered capital of \$40,000 may also self-insure in Florida.

Rationale for Financial Requirements

Florida's financial requirements are based upon the amount needed to comply with minimum liability insurance requirements. They were established by an actuarial study done for the state legislature by the insurance industry approximately 11 years ago.

<u>State</u>	<u>Financial Requirements</u>	<u>Rationale for Financial Requirements</u>																		
Georgia (1)	<p>Sufficient net worth to self-insure. The minimum amount of net worth that is required is:</p> <table><tr><th><u>Number of Vehicles</u></th><th><u>Sufficient Net Worth</u></th></tr><tr><td>1-50</td><td>\$120,000</td></tr><tr><td>51-100</td><td>160,000</td></tr><tr><td>101-135</td><td>200,000</td></tr><tr><td>136-182</td><td>240,000</td></tr><tr><td>183-246</td><td>280,000</td></tr><tr><td>247-332</td><td>320,000</td></tr><tr><td>333-448</td><td>360,000</td></tr><tr><td>449-605</td><td>400,000</td></tr></table>	<u>Number of Vehicles</u>	<u>Sufficient Net Worth</u>	1-50	\$120,000	51-100	160,000	101-135	200,000	136-182	240,000	183-246	280,000	247-332	320,000	333-448	360,000	449-605	400,000	<p>The basis for Georgia's financial requirements could not be determined.</p>
<u>Number of Vehicles</u>	<u>Sufficient Net Worth</u>																			
1-50	\$120,000																			
51-100	160,000																			
101-135	200,000																			
136-182	240,000																			
183-246	280,000																			
247-332	320,000																			
333-448	360,000																			
449-605	400,000																			
Hawaii (1)	<p>Surety bond or deposit of not less than \$100,000.</p>	<p>The basis for Hawaii's financial requirements could not be determined. In practice, the actual required amount for a given self-insurer is actuarially determined.</p>																		
Indiana (1)	<p>Deposit (cash, surety bond, or letter of credit) of \$40,000 for first vehicle. \$20,000 deposit for each additional vehicle up to a maximum of \$1 million. If excess liability is provided, the deposit is equal to the self-insured retention.</p>	<p>The basis for Indiana's financial requirements could not be positively determined, but it is supposed that they are based upon the amount needed to comply with minimum liability insurance requirements.</p>																		

Financial Requirements

State

Kentucky  
(1)

Security in the form of a deposit (of cash or securities which may be purchased by domestic insurers to meet deposit requirements) or a bond - must be provided. The security must be \$50,000 for one vehicle and \$10,000 for each additional vehicle subject to a maximum of \$200,000. (Subsidiaries can be consolidated under a parent's certificate so that the commissioner can increase the amount of deposit required by up to 50 percent in order to cover decreases in market value of securities.

Louisiana  
(25) or less

Own Louisiana property sharing assessed value of \$100,000 or more after deducting any encumbrances.

(26) or more

None

Maine  
(1)

Assets exceeding statutory insurance limits of \$20,000/40,000/10,000 (i.e., company must show it can handle a claim of \$50,000).

Massachusetts  
(1)

Must purchase, from an insurance company or other surety licensed in Massachusetts, a bond in the amount of \$10,000 per vehicle.

Rationale for Financial Requirements

The basis for Kentucky's financial requirements could not be determined.

The basis for Louisiana's financial requirements could not be determined.

The basis for Maine's financial requirements could not be determined.

The basis for Massachusetts's financial requirements could not be determined.

<u>State</u>	<u>Financial Requirements</u>	<u>Rationale for Financial Requirements</u>
Michigan (26)	A reserve must be carried on an applicant's book for outstanding claims. The minimum amount is \$100 for each vehicle plus all outstanding claims for the last four years. For school buses, the amount is \$200 per vehicle plus all outstanding claims for the last four years. In lieu of the reserve, a bond can be purchased from a surety authorized to conduct business in Michigan. The bond must provide bodily injury liability limits of \$20,000/40,000/10,000, and the surety must provide unlimited liability "for all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery and rehabilitation." In addition to the contingent liability a firm must have a net worth of \$1 million, but a bond for the difference between an applicant's net worth and \$1 million can be used.	The basis for Michigan's financial requirements could not be determined.
Michigan (26)	Net worth of \$5 million. Bond required in the amount of \$100,000 or 125 percent of outstanding liabilities, whichever is greater.	The basis for Michigan's financial requirements could not be determined.
Nevada (11)	Security of \$40,000 is required for fleets of 11 to 25 vehicles. For larger fleets the security requirement is	



<u>State</u>	<u>Financial Requirements</u>	<u>Rationale for Financial Requirements</u>
Nevada (con't)	<u>Number of Vehicles</u> 26- 50 57- 75 76- 100 101- 250 251- 500 501- 750 751-1000 1001 or more 200,000 (minimum)	<u>Amount</u> \$45,000 50,000 55,000 75,000 100,000 150,000 200,000
New Hampshire	Security can be in the form of cash, time deposits within a bank within Nevada, or a surety bond.  Applicants must prove their ability to meet a \$75,000/accident minimum.	The basis for New Hampshire's financial requirements could not be determined.
Ohio	Applicant must have \$32,500 in assets for every self-insured vehicle.	Ohio's financial requirements are based upon the amount needed to comply with minimum liability insurance requirements.
Oklahoma (26)	Security equal to \$30,000 per vehicle must be posted. Security can be bond or securities as may be purchased in a savings bank or a trust fund.	Oklahoma's financial requirements are based upon the amount needed to comply with minimum liability insurance requirements.
Pennsylvania (1)	Security equal to \$50,000 for one vehicle and \$10,000 for each additional vehicle up to a maximum of \$1 million. Valid sources of security include: currency, evidence of escrow deposits, irrevocable letters of credit, surety bonds, negotiable obligations; corporate bonds, and certificates of deposits.	The basis for Pennsylvania's financial requirements could not be determined.

State

Texas  
(26)

Financial Requirements

Sufficient assets to pay three minimum \$55,000 claims (\$20,000/40,000/15,000).

Utah  
(1)

Deposit (cash, securities or surety bond) of \$200,000 plus \$100 times each vehicle from 1 to 1,000, plus \$50 times each vehicles in excess of 1,000.

Vermont

Unencumbered net worth of \$100,000 or more.

Virginia  
(21)

Net working capital equal to minimum limits of motor vehicle liability policy (\$25,000/50,000/10,000) for a total of \$60,000. In lieu of working capital requirement, a bond, cash, securities, or a line of credit may be provided.

Rationale for Financial Requirements

Texas' financial requirements are based upon the amount needed to comply with minimum liability insurance requirements. The state legislature requires that a self insurer be able to cover several claims, with the department of transportation defining "several" as three.

Utah's financial requirements are based upon a 7 to 8 year old determination of the average large liability claim.

The basis for Vermont's financial requirements could not be determined.

The basis for Virginia's financial requirements could not be determined.



## Appendix E

One of the difficulties involved in using predetermined criteria for evaluating an entity's financial ability to self-insure is the relative inflexibility of these measures. Additionally, the diversity of entities which self-insure in Maryland makes the use of standardized criteria inappropriate. The most frequently heard concern during our hearings was the need to maintain flexibility so that self-insurance can be a viable alternative to insurance affordability and availability problems.

An examination of the methodology used by the Workers' Compensation Commission for its evaluation of self-insured entities reveals that its "viability index" overcomes these problems.

In evaluating applications for self-insurance areas of immediate concern are the financial ability to pay claims promptly, the frequency and severity of claims in recent years, the risk of catastrophic losses, and the size of the self-insured entity (subsidiaries, etc.). These are also areas important in the monitoring process. Financial soundness is determined by analyzing audited financial statements. An applicant must submit audited financial statements for three years prior to the date of application. Balance sheet data, including an income statement, is entered on a formatted worksheet. An analysis of key financial ratios is then performed on a form designed for that purpose. The data is analyzed in terms of absolute values, (e.g. a substantial net worth) as well as for significant ratios that reflect on current strength and future viability, (e.g. debt to equity and profitability). A composite indicator called a "Viability Index" is calculated as follows:

$$\left[ \frac{\text{Current Liabilities}}{\text{Current Assets}} \times \frac{\text{Total Liabilities}}{\text{Total Assets}} \times \left( \frac{\text{Cost of Sales}^A}{\text{Sales}} \right) \right] \times 4 = \text{V.I.}$$

Various financial ratios are compared to the range of ratios for that industry, as reported by the Dun and Bradstreet Company, and ranked above to below average (upper, middle, lower quartiles). The Viability Index is useful as a summary. A Viability Index score of 1.0 or less is usually an indicator of very good financial health. A score between 1.0 and 2.0 is satisfactory, while scores over 2.0 are progressively less desirable as the index figure rises. A too-high debt to equity ratio, poor profitability, and a Viability Index score over 2.0 are justifiable reasons to

deny self-insurance. If a current self-insurer moves into the questionable area, it may be considered for revised terms or for cancellation. Any information regarding legal, environmental, safety, or administrative problems will be considered. Virtually any facts that could affect the strength and viability of the applicant may be considered in the decision. These criteria are primarily applicable to business enterprises.

Somewhat modified financial criteria are applied to banks, not-for-profit employers (hospitals) and local government operations. A bank's capital as a percentage of assets is very critical, although it is usually under 10%. This reflects the bank's role as a financial intermediary. Loss reserves and non-performing loans are other key gauges of a bank's position. Profitability is, of course, still important.

Not-for-profit entities will show a gain or decrease in the "fund balance" instead of a profit or loss and retained earnings changes. The year-to-year pattern of gross revenues and of increases and decreases in the fund balance, together with the relative debt burden on the balance sheet will sway the decision on this type of self-insurer. Thus, if a hospital shows stable or rising revenues and a healthy fund balance, it is probably a good risk, i.e. business is good and it is not losing money.



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